

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KUSHAL SHAH, f/k/a GERRON	§
LINDSEY,	§
	§ No. 334, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0002019767
Plaintiff Below-	§
Appellee.	§

Submitted: July 27, 2011
Decided: September 23, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 23rd day of September 2011, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Kushal Shah, filed this appeal from the Superior Court's denial of his motion for correction of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Shah's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Shah pled guilty but mentally ill to one count of first degree murder in April 2002. In exchange for his guilty plea, the State agreed not to seek the death penalty and also dismissed other eleven criminal charges pending against Shah. After the Superior Court denied his motion to

withdraw his guilty plea, Shah was sentenced to life imprisonment. Since that time, Shah has filed numerous unsuccessful petitions seeking postconviction and habeas corpus relief. In his latest petition, Shah sought correction of his sentence on the ground that, as a result of his guilty but mentally ill plea, he should be housed at the Delaware Psychiatric Center and not in prison. The Superior Court denied Shah's motion for correction of sentence on the ground that the issue already had been resolved against Shah in a prior habeas corpus petition and in his sixth motion for postconviction relief.¹

(3) In his opening brief on appeal, Shah continues to assert that his sentence is illegal because he should be housed at the Delaware Psychiatric Center and not at the Vaughn Correctional Center. Relief under Rule 35(a), however, is available only "when the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double Jeopardy Clause."² Section 408(b) of Title 11 provides, among other things, that a defendant who pleads guilty but mentally ill "may have any sentence imposed which may lawfully be imposed upon any defendant for the same offense."³ The Superior Court in this case legally sentenced Shah to life imprisonment for intentional murder.⁴ The substance of Shah's motion does not allege any illegality with respect to the terms of his sentence. His claim is simply that the Department of Correction erred in not

¹ See *Shah v. State*, 2011 WL 136666 (Del. Apr. 11, 2011) (affirming the Superior Court's denial of Shah's sixth petition for postconviction relief).

² *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

³ DEL. CODE ANN. tit. 11, § 408(b) (2007).

⁴ DEL. CODE ANN. tit. 11, § 4209(a) (2007).

housing him at the Delaware Psychiatric Center when he was first remanded to DOC custody. Such a claim against the DOC is not an appropriate basis for relief under the narrow function of Rule 35(a).⁵ Moreover, the Superior Court previously rejected Shah's argument in denying both habeas corpus and postconviction relief. Absent evidence of clear error or an important change of circumstance, that former ruling is the law of the case and will not be altered.⁶

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ *Id.*

⁶ *Bailey v. State*, 521 A.2d 1069, 1093 (Del. 1987).